No. 390. 136

Motion to advance.

Office Supreme Court U.S.
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JAMES H. McKENNEY,
Clerk.

Filed Nov. 16, 1900.

Supreme Court of the United States,

OCTOBER TERM, 1900.

No. 390.

WILLIAM B. DINSMORE AND C. GRAY DINSMORE, AND WILLIAM B. DINSMORE, C. GRAY DINSMORE, AND DUMONT CLARKE, AS EXECUTORS AND TRUSTEES UNDER THE WILL OF WILLIAM B. DINSMORE, DECEASED, APPELLANTS,

vs.

THE SOUTHERN EXPRESS COMPANY; L. N. TRAMMELL, THOMAS C. CRENSHAW, JR., AND SPENCER R. ATKINSON, COMPOSING THE RAILROAD COMMISSION OF THE STATE OF GEORGIA, ET AL., APPELLEES.

Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, and Return.

Motion by Petitioners in Certiorari and Appellants to Advance, in Which The Appellees Join and Concur.

To the Railroad Commissioners of the State of Georgia, and to the Honorable Joseph M. Terrell, attorney General of the said State, and Solicitor for the said Commissioners. Also to the Southern Express Company:

PLEASE TAKE NOTICE

That on Monday, November 19th, 1900, at the opening of the Supreme Court of the United States on that day, or as soon thereafter as counsel can be heard, a motion will be made to advance, under the rules of the Court, the cases of William B. Dinsmore, et al., Appallants, vs. the Railroad Commissioners of the State of Georgia, Appellees, and William B. Dinsmore, et al., Appellants, vs. The Southern Express Company and others, Appellees—brought up to the Supreme Court of the United States under writ of certiorari of the Circuit Court of Appeals of the United States for the Fifth Circuit, and being No. 390 on the Docket of the Supreme Court of the United States, October term, 1900.

FRANK H. MILLER,
Solicitor for William B. Dinsmore and others.

Service of the above notice is hereby acknowledged; copy received by the Southern Express Company, which consents that the motion be granted.

Nov. 8, 1900.

F. G. DUBIGNON,
Attorney for Southern Express Co.

Service of the above notice is hereby acknowledged; copy received by me this day as Attorney-General of the State of Georgia and Solicitor for the Railroad Commissioners thereof.

Consent is hereby given to the granting of the motion by the Court. I also join in the motion and request to advance, and in doing so invoke an application of Section 949 of the Revised Statutes, inasmuch as the State of Georgia is practically a party.

This Nov. 10, 1900.

J. M. TERRELL,
Of Counsel for the Railroad Commission of Ga.

Supreme Court of the United States.

OCTOBER TERM 1900.

No. 390.

WILLIAM B. DINSMORE AND C. GRAY DINSMORE, AND WILLIAM B. DINSMORE, C. GRAY DINSMORE, AND DUMONT CLARK, AS EXECUTORS AND TRUSTEES UNDER THE WILL OF WILLIAM B DINSMORE, DECEASED, APPELLANTS.

vs.

THE SOUTHERN EXPRESS COMPANY; L. N. TRAMMELL, THOMAS C. CRENSHAW, JR., AND SPENCER R. ATKINSON, COMPOSING THE RAILROAD COMMISSION OF THE STATE OF GEORGIA, ET AL., APPELLEES.

Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit and Return.

And now come the petitioners in certiorari and the Appellants, W. B. Dinsmore, et al., and respectfully move the Court to advance the above-stated case for hearing at the earliest practicable time at its present session. That for cause for the granting of this motion, they respectfully state :

First. That the questions involved in the suit are of gravity and importance to the nation at large, in that, besides the State of Georgia, the States of North Carolina, South Carolina, Mississippi and Arkansas, are within the territory occupied by the Southern Express Company. Each State has a Railroad Commission. In North Carolina and South Carolina they have passed orders substantially the same as in Georgia, which require the Express Company alone to pay the revenue stamp tax on receipts issued for transportation, and have deprived the Company of its right to contract with the shipper so to do. Other Railroad Commissions are awaiting the result of this case. In Illinois, Ohio, Indiana, Iowa, Kentucky, Michigan, Minnesota, Wisconsin, New York, North Dakota, Missouri Kansas and Nebraska, the territory of other

express companies, there are also State Railroad Commissions, the authority delegated to each being slightly different, but none of the States, North or South, have delegated to any of their Railroad Commissions any other or greater authority than to fix rates and enforce their orders in reference thereto by confiscatory suits.

Second. It is important to at once define the power, if any, and the limits of the power, that these State Administrative Boards have to determine who shall and who shall not pay a stamp duty lawfully imposed by Congress, when under the Constitution the power is given Congress alone to "levy and collet taxes," &c. In this case the Circuit Court of Appeals have in effect, held that the Georgia Commission had the power to determine who shall pay said stamp duty and enforce collection thereof by state statutory penalty suits, after the decision of this Court in 167 U. S. 404, 419.

Third. It is important to the shipping public and the express companies throughout the United States to finally know who is required by the said Act of Congress to pay the stamp duty on receipts for packages transported by express within the several states comprising the United States. And whether the Act of Congress or the decisions of Railroad Commissions of the respective states control.

Fourth. It is important to have adjudicated whether or not a uniform excise duty imposed by Congress, can be held, in a case where the one-cent stamp on an express receipt is required by the company to be attached by the shipper before transporting goods, "to manifestly discriminate, largely and unjustly, between the shipper of a small package for a short distance for a low rate, and the shipper of a larger package for a longer distance at a larger rate."

Fifth. It is important to the stockholders and the Express Company to have relief from the great expense put upon the company, alone aggregating in the one State of Georgia $40,000 per annum, and daily continuing over the States of North Carolina and South Carolina, the state of the pleadings being such that no supersedeas can be obtained pending final decision herein—so that complainants sustain daily an irreparable loss.

In the brief of file in behalf of the Railroad Commissioners of Georgia, by the Attorney-General, it is stated in proposition No. 3 thereof:

> "This is a suit against the State of Georgia. Its principal object "is to enjoin penalty suits against the Southern Express Company. "The penalty, if recovered, is for violation of the State law. Ac- "tions to recover the same are to be prosecuted in the name of the "State. The amount of any recovery had under such suits is to be

"paid into the State Treasury and used for the benefit of the "State."

To this brief is annexed a copy of the decision of Commissioner Atkinson, made the judgment of the Railroad Commsssion, which holds that a failure or refusal on the part of the Company to accept for shipment goods tendered to it without prepayment by the shipper of the revenue tax required by it to be affixed to its bill of lading, is a violation of the provisions of the Act of Congress and incurs the penalties which are therein prescribed.

This penalty is not less than $1,000 nor more than $5,000 for each offense, this risk the Company runs under existing circumstances for every failure or refusal on its part to obey the order of the Railroad Commission itself.

It is therefore, respectfully urged, that this case is one that falls within the seventh section of Rule 26 of this Court, as one attended by the special and peculiar circumstances herein stated, and as such should be advanced. This is admitted by the Attorney General, who also claims that the case should be advanced under section 949 of the Revised Statutes, as one to which the State of Georgia is practically a party.

FRANK H. MILLER,
Attorney for Appellants and Petitioners in Certiorari,
705 Broad St., Augusta, Ga.